

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

AGENDA

Supreme Court's Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

May 21, 2003 - 12:00 p.m.

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| 1. | WELCOME AND APPROVAL OF MINUTES | Todd Utzinger |
| 2. | RULES 10, 25 & 50 | Clark Sabey |
| 3. | RULE 22, 24, 27 & 35 | Matty Branch |
| 4. | OTHER BUSINESS | |
| 5. | ADJOURN | |

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

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MINUTES

APPROVED MINUTES

Supreme Court's Advisory Committee on the Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114-0241

May 21, 2003 - 12:00 p.m.

ATTENDEES

Todd Utzinger
Matty Branch
Fred Voros
Marian Decker
Larry Jenkins
Clark Sabey
Juli Blanch
Judge Gregory Orme

EXCUSED

David Arrington
Fred Metos
George Haley
Clark Nielsen
Karra Porter
Joan Watt

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Fred Voros moved to approve the minutes of the April meeting. The motion passed unanimously.

II. RULE 10

Clark Sabey proposed an amendment to Rule 10 to address the fact that the issue of jurisdiction can be raised at any time. Fred Voros suggested a change in sentence and paragraph structure and then moved to approve the rule as proposed and amended. Clark Sabey seconded the motion. The motion carried unanimously.

III. RULE 25

Mr. Sabey proposed an amendment to Rule 25 to clarify that an appellate court is not required, under any circumstances, to accept an amicus brief. Fred Voros suggested clarifying that parties to the case may indicate opposition to an amicus filing, as well as support. Matty Branch moved to approve Rule 25 as proposed and amended. Clark Sabey seconded the motion. The motion carried unanimously.

IV. RULE 22

Matty Branch proposed an amendment to Rule 22 to conform the language with the similar rule in the Rules of Civil Procedure. Fred Voros moved to approve the amendment. Matty Branch seconded the motion. The motion carried unanimously.

V. RULE 27

Ms. Branch also proposed an amendment to Rule 27 to indicate that a brief must indicate if the defendant is presently incarcerated and if the brief is an Anders brief. Fred Voros suggested clarifying that this requirement applies only in criminal cases. Mr. Voros also suggested requiring the statement on all criminal case briefs, so that the clerks can determine whether the party has complied with the requirement. The Committee then discussed whether the requirement should apply to the prosecution's brief and whether the rule should cite to Anders v. California. After brief discussion, Fred Voros proposed the following language: "in criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal or if the brief is an *Anders* brief." Matty Branch seconded the motion. The motion carried unanimously.

VI. RULE 35

Ms. Branch also proposed an amendment to Rule 35 to clarify that an amicus may not file a petition for rehearing. Judge Orme questioned whether an amicus should even be allowed to file an answer to a petition. After brief discussion, the Committee agreed that an amicus could file an answer. Fred Voros then move to approve Rule 35 as proposed. Matty Branch seconded the motion. The motion carried unanimously.

VII. RULE 24

Matty Branch stated that the appellate courts would like to see a requirement that parties articulate the grounds and legal arguments when attorney's fees are requested. Judge Orme stated that sometimes attorneys will simply throw in an attorney's fees request without discussion or argument and it would be helpful to the courts if the parties would provide more. Fred Voros questioned whether the requirement should be a separate section in the brief or just somewhere in the argument. Todd Utzinger questioned whether it might be better to address the issue after the court has issued its decision. Larry Jenkins stated that this is the process followed by the federal courts. Judge Orme stated that the courts would prefer the discussion to occur at the same time as the regular briefing. After further discussion, Matty Branch stated that she will work with Judge Orme on proposing specific language and where it should go in the rule.

VIII. OTHER BUSINESS

Larry Jenkins noted that there is potential confusion and conflict in the rule with something being called an “appendix” in one type of brief, and an “addendum” in another brief. The Committee members agreed that they are both essentially the same thing and that the rules should be made consistent, using the same word “addendum.”

Todd Utzinger stated that the Committee may need to address an issue on supplementing the record on appeal. Fred Voros noted that there are three types of potential supplementation and the rule does not distinguish between the types. Mr. Utzinger stated that he is currently involved in a case in which the court conducted an in-camera review of documents and then the judge sent the documents back to the party without making the documents a part of the record. The attorney has been subject to a state bar proceeding for failing to supplement the record on appeal by including these documents. The Committee agreed that this issue should be addressed in the future.

IX. ADJOURN

The Committee scheduled its next meeting for June 18, 2003. There being no further business, the Committee adjourned at 1:20 p.m.